

****NOT FOR PRINTED PUBLICATION****

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VENETTA WILLIAMS,

Plaintiff,

v.

**COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,**

Defendant.

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CIVIL ACTION NO. 6:17-CV-00040-RC

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636(b)(3). On September 11, 2017, the Magistrate Judge issued a Report and Recommendation containing his proposed findings and recommending that Plaintiff's complaint be dismissed without prejudice for failure to effect service. (Doc. No. 6.) Plaintiff filed Objections (Doc. No. 10.) Having conducted a *de novo* review of Plaintiff's written objections, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. 28 U.S.C. § 636(b)(1).

Plaintiff states Defendant was not served because the case file was inadvertently placed in a file cabinet of cases files where summonses had already been served. (Doc. No. 10.) Plaintiff states that the summonses are now served, albeit late. *Id.* Plaintiff argues that dismissing the case due to failure to serve will be a waste of judicial resources. *Id.* The Federal Rules state:

“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against the defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate time period.”

FED. R. CIV. P. 4(m). Plaintiff filed suit on January 12, 2017. Service was therefore due on April 12, 2017. Nearly five months passed before the Report and Recommendation was issued on September 11, 2017 recommending dismissal. Plaintiff stated reason of misplacing a file is insufficient to show good cause to extend the time for effecting service to such a degree. Plaintiff’s objection is **OVERRULED**.

Therefore, the Court **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. All objections are **OVERRULED** and the case is **DISMISSED WITHOUT PREJUDICE**.

So Ordered and Signed

Nov 4, 2017



Ron Clark, United States District Judge